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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/153523

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 14, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 19, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for speech and language therapy services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Theresa Walske

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Racine County. He is 4 years old and lives with his parents.

2. Petitioner's primary treatment diagnosis is "delayed milestones." There is no related medical diagnosis.
3. On September 17, 2013, the Petitioner's provider, Medical Support Services, submitted a prior authorization (PA) request to the agency requesting speech therapy services, 30 minutes, 2x/week for 26 weeks.
4. Petitioner attends Racine Unified School District. His IEP, developed May 17, 2013, indicates that he receives speech therapy 60 minutes/week; social, academic and attending skills instruction 120 minutes/day; occupational therapy 20 minutes, 2x/week. The IEP is effective for June 3, 2013 – May 16, 2014. The IEP notes that a speech/language evaluation was done on September 26, 2012. It noted that the Petitioner lacks verbal language, including limited understanding of language. His nonverbal communication behaviors were noted to be ineffective but he is making attempts to communicate nonverbally. He shows emotionally expressive facial affect and gives meaningful eye contact. He could not interact with peers in an appropriate manner because he could not use words. It was noted that during the year he made progress. He was able to use an "I want" board to make choices. He could correctly sign "more". He had an increasing variety of consonant sounds and vocalized when presented with a variety of pictured stimuli. He was frequently able to imitate the correct beginning sound of a word. His receptive language was noted to continue to be delayed. He could indicate a limited number of pictured cues. He is using more alternative methods of communication and increasing his sound inventory. He is successful using signs and picture communication in 3-4 settings. Goals for speech language in the IEP are:

Improve ability to communicate by completing the following:

Indicating comprehension of common objects, actions, adjectives and people in 5/10 trials (current: indicates 2-5 pictures)

Expressing functional/social language via gestures, words, signs, or alternate means of communication with one adult cue in 10 new situations (current: uses communications methods in about 3 – 4 settings).

5. A previous PA request for services for June, 2013 – September, 2013 was approved by the agency because the Petitioner would not be receiving speech and language therapy services during the summer months. The PA was approved for 30 minutes, 2x/week from June 11, 2013 through September 2, 2013. The approval included the following language: "Individual Education Plan documents Member has made progress in the area of speech and language during the school year with the services provided. Current documentation does not support speech and language therapy in the community is required in addition to the services provided by the school."
6. An evaluation of the Petitioner was conducted on June 11, 2013 by Medical Support Services. He was evaluated using the Rossetti Infant-Toddler Language Scale, parent report and clinical handling/observations. Due to his age the Rossetti scale could not be formally scored but it was used as a guide to determine his language skill level. The Petitioner's language comprehension skills were found to be at the 6 – 12 month range and his language expression skills were found to be at the 0 – 6 month range. It was reported that the Petitioner does not use words. No vocalizations were observed except attempts to imitate the letters in his name. Long-term goals were identified:

For the functional purpose of being able to follow directions, understand others thoughts, ideas and expressions [REDACTED] will improve his receptive language skills.

For the functional purpose of being able to communicate sounds, words, thoughts, and ideas effectively in order to express wants/needs to others, [REDACTED] will improve his expressive language skills.

For the functional purpose of being able to speak intelligibly in order to communicate and be understood with familiar and unfamiliar communication partners, [REDACTED] will improve his speech production skills.

The Plan of Care contains the following short-term goals:

Participate in songs, finger plays and other speech activities via imitation of fine/gross motor movements, sounds and words in 85% of opportunities in structured activities given moderate – minimal cues

Demonstrate comprehension for routine one-step directives in 80% of opportunities in structured activities given mod-min cues

Increase his verbal imitation skills by imitating sounds and/or words modeled in 70% of opportunities in structured activities given max cues.

Increase his expressive vocabulary by 3 – 5 signs and/or verbal approximations as reported by parent and/or as demonstrated in therapy by the end of this POC period.

7. The Plan of Care submitted with the current PA is for the period of September 24, 2013 – December 23, 2013. The following goals are contained in the POC:

Petitioner will participate in songs, finger plays, and other speech activities via imitation of fine/gross motor movements, sounds, and words in 80% of opportunities in structured activities given mod-min cues.

Petitioner will demonstrate comprehension for routine one-step directives in 75% of opportunities in structured activities given mod-min cues.

Petitioner will use joint attention and visual tracking as related to a toy or person (requesting) 7/10 times when given maximum cues.

Petitioner will demonstrate the comprehension of indicating “yes” via head nod, gestures/signs and/or words 7/10 times when given medium cues.

The POC also notes progress from the previous POC goals as follows:

Participate in songs, finger plays and other speech activities via imitation of fine/gross motor movements, sounds and words in 80% of opportunities in structured activities, given max cues: goal partially met/revise goal to reflect progress – Petitioner will participate in songs, finger plays and other speech activities via imitation of motor movements with 80% accuracy when given maximum cues. He has not participated in these activities via sounds or word imitations.

Demonstrate comprehension for routine one-step directives in 60% of opportunities in structured activities given max cues: goal met/revise goal to reflect progress – Petitioner demonstrates comprehension for routine one-step directions (ex: put in) in 75% of opportunities when given maximum cues.

Increase his verbal imitation skills by imitating sounds and/or words modeled in 60% of opportunities in structured activities given max cues: goal not met/continue goal. Petitioner has been noted to imitate the names of the letters in his name, the /m/ sound for more, and he will blow to indicate bubbles when given maximum cues.

Increase his expressive vocabulary by 2-3 signs and/or verbal approximations as reported by parent and/or as demonstrated in therapy by the end of this POC period: goal emerging/continue goal: Petitioner will use the sign for “more” 33% of the time when given maximum cues and models. He has been observed using the sign for “all doen” one time spontaneously. The use of all other signs have been done hand over hand. Petitioner will use picture communication boards to indicate his wants/needs with moderate-minimum cues when pictures/boards are provided. His mother has been given picture communication boards to use at home that contain highly motivating and frequently used objects and places.

8. On October 3, 2013, the agency denied the Petitioner’s PA request.
9. On November 14, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Adm. Code § DHS 107.18(2). In determining whether to approve such a therapy request, the Bureau employs the generic prior authorization criteria found at § DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. “Medically necessary” services are those “required to prevent, identify or treat a recipient’s illness, injury, or disability. Wis. Admin. Code § DHS 101.03(96m)(a).

Included in the definition of “medically necessary” at § DHS 101.03(96m)(b) are the requirements that services be of proven medical value or usefulness, that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. In addition therapy services are not to be approved if other therapies are providing sufficient services to meet the recipient’s functioning needs. Wis. Admin. Code § DHS 107.18(3)(e)6. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.02. It is up to the provider to justify the provision of the service. Wis. Admin. Code § DHS 107.02(3)(d)6.

During the fair hearing process, it is generally accepted that the state or county agency, as the party which has taken the action appealed from bears the burden of proof of the propriety of that action. See *State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). Like most public assistance benefits, however, the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is Petitioner’s burden to demonstrate that he qualifies for the requested speech and language services.

The agency argues that the requested services are not medically necessary because documentation of Petitioner’s progress with previous services demonstrates that 60 minutes/week of speech and language therapy has led to progress at school and 60 minutes/week of therapy led to progress over the summer months. This PA requests 60 minutes/week in addition to the 60 minutes/week previously rendered. The agency asserts that the documentation is insufficient to justify 60 minutes/week in addition to the 60 minutes/week he receives at school when the Petitioner has shown steady progress in the past with 60 minutes/week.

The agency further contends that the requested services are duplicative of the services he is receiving at school. Specifically, the agency points out that participating in songs and finger plays, following directions, receiving cues from peers and teachers, joint attention during the day through interaction with

teachers and peers and responding to yes/no questions are all part of a typical school day and having these goals for private therapy are duplicative of services received at school.

The Petitioner was represented at the hearing by his therapist and mother. The therapist notes that the requested services are not duplicative. She argues that the school is focusing on expressive language and she is focusing on receptive language skills. The goals of each are different. Because there are different goals, the school will not be accountable to make sure he is participating in songs and finger plays, following instructions, receiving cues and responding to yes/no questions because these are not goals in his IEP. She asserts that because the school is not tracking receptive language skills, there is less time involved in the therapy he receives at school. The Petitioner's mother also notes that he is only in school 2 hours/day, 4 days/week so there is not sufficient time to work on speech and language skills. The therapist also testified that the Petitioner could receive intensive ABA therapy but he is not at this time.

Based on the evidence, I conclude the agency properly denied the requested services as not meeting the definition of "medically necessary." The evidence is insufficient to demonstrate that an additional 60 minutes/week of private therapy is medically necessary in addition to the speech therapy services the Petitioner is receiving at school. Though the goals of the private therapy plan of care are different, the agency's argument that the goals of that plan of care can be met through the school's IEP is persuasive. Though the school may not have the specific goals of the private therapy plan of care in the IEP, I conclude that the school is accountable through the goals enumerated as well as the general mission of a school to ensure Petitioner will respond to questions, participate in songs and finger play, following instructions and receive cues from peers and teachers to the best of his ability.

While the Petitioner may benefit from additional private therapy, I am required to apply the standards in the regulation. The Petitioner has shown progress from 60 minutes/week of therapy. There is insufficient evidence to demonstrate that an additional 60 minutes/week is "medically necessary" at this time.

### **CONCLUSIONS OF LAW**

The agency properly denied the Petitioner's PA request for speech and language therapy services.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

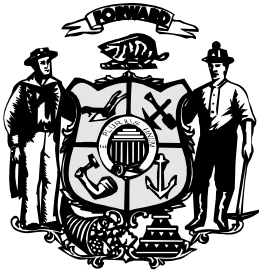
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of February, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 18, 2014.

Division of Health Care Access and Accountability